SHARIFAH AINI SYED JAAFAR

v.

KARANGKRAF SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
AJAIB SINGH J
[SUIT NO. P 1408 OF 1985]
16 DECEMBER 1988

BANKRUPTCY: *Plaintiff's action against defendant is for damages for injury to her reputation - Defamation - Plaintiff adjudicated a bankrupt before completion of case - Whether plaintiff can maintain her suit against defendant in her own right or should she obtain sanction of official assignee - Section 38(1)(a) of Bankruptcy Act 1967 - Damages to be awarded to plaintiff - Whether it will pass to official assignee or will remain with plaintiff.*

The plaintiff, a well-known singer, sued the defendants for defamation arising out of certain articles published by the defendants in their weekly newspaper 'Bacaria'. The hearing of the suit has been going on for sometime, before the case could be completed, the plaintiff was adjudicated a bankrupt on 12 September 1988. The question in this case is whether the plaintiff can maintain her suit against the defendants in her own right or whether she should obtain the sanction of the official assignee.

Held:

[1] Rights of action relating to a bankrupt's property pass to the official assignee but any right of action arising from injury to a bankrupt person or their reputation does not pass to the official assignee but remains with the bankrupt.

[2] In this case, as the plaintiff's suit against the defendants is of a personal nature for damages for injury to her reputation, it does not touch upon her property.

[3] The plaintiff need not obtain the sanction of the official assignee as she is perfectly entitled to pursue her claim against the defendants in her own personal capacity.

[4] In the event she succeeds in her suit against the defendants any damages which may be awarded to her will not pass to the official assignee but will remain with her.

[5] The Court will proceed with the trial.

[Order accordingly.]

Legislation referred to:
Bankruptcy Act 1967, s. 38(1)(a)

For the plaintiff - Mohd Shafee; M/s. Shafee & Co.
For the defendants - P.S. Ranjan; M/s. Adam & Co.

JUDGMENT

Ajaib Singh J:

Under s. 38(1)(a) of the Bankruptcy Act 1967 an undischarged bankrupt is "incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the official assignee".

The plaintiff in this case has sued the defendants for defamation arising out of certain articles published by the defendants in their weekly newspaper Bacaria. The hearing of the suit has been going on for sometime - with unavoidable delays for one reason or another - not least of which have been to accommodate the plaintiff herself. She is a well-known singer and travels often to various places in Malaysia and abroad for her singing assignments. Meanwhile before the case could be completed the plaintiff was adjudicated a bankrupt on 12 September 1988. The question to be decided now is whether the plaintiff can maintain her suit against the defendants in her own right or whether she should obtain the sanction of the official assignee.

Upon bankruptcy the official assignee becomes the receiver of the property of the bankrupt and any dealing with the bankrupt's property is to be conducted by or through the official assignee. Rights of action relating to a bankrupt's property pass to the official assignee but any right of action arising from injury to a bankrupt's person or reputation does not pass to the official assignee but remains with the bankrupt. In this case the plaintiff's suit against the defendants is of personal nature and does not touch upon her property. Her action against the defendants is for damages for injury to her reputation. In the event that she succeeds in her suit against the defendants any damages which may be awarded to her will not pass to official assignee but will remain with her. The plaintiff need not obtain the sanction of the official assignee as she is perfectly entitled to pursue her claim against the defendants in her own personal capacity. The Court will accordingly proceed with the trial from the point when it was last adjourned.

Also found at [1989] 2 CLJ 1269